



Comprehensive Water Review

Final Decree Transition Stakeholder Working Group Meeting Summary

March 10, 2022

Room 317 Capitol Building, Helena, MT

Meeting Objectives:

- Build shared understanding about the purpose, objectives, and structure of the Stakeholder Working Group (SWG)
- Clarify the roles and responsibilities of SWG members, support staff, technical and subject matter experts, and the public
- Develop an initial work plan and timeline for the SWG
- Discuss and clarify informational needs
- Discuss and clarify communications needs and protocols
- Build working relationships

Welcome and Opening Remarks

- Welcome – Anna Pakenham Stevenson, Water Resources Division Administrator
 - DNRC mission and correlation to comprehensive water review and engagement of stakeholders

Introductions of Stakeholder Working Group Members

SWG Members were invited to introduce themselves, share their experience and expertise that they bring to the purpose and desired outcomes of this working group.

The Final Decree Transition Stakeholder Working Group Members are:

John Bloomquist

Andrew Gorder

Mike Roberts

Abby Brown

Kelly Lynch

Melissa Schlichting

Krista Lee Evans

Ryan McLane

Ronda Wiggers

Peter Fritsch

Mike Murphy

SWG Member bios can be found on the DNRC Comprehensive Water Review website:

<https://comprehensivewaterreview.mtdnrc.gov/pages/final-decree-transition>

Facilitator – Heather Stokes, Center for Natural Resources and Environmental Policy at the University of Montana

DNRC Technical Advisory Committee (TAC)

Anna Pakenham Stevenson, Water Resources Division Administrator

Ann Schwend, Water Resource Planner

Mark Elison, Billings Water Resources Regional Manager

Kathy Olsen, Kalispell Water Resources Regional Manager

Matt Norberg, Stream Gage Program Manager; Water Commissioner Trainer

Molly Kelly, Attorney

Brian Bramblett, Chief Legal Counsel

Nate Ward, Acting Water Rights Bureau Chief

SWG Purpose, Objectives, Structure, and Process

Purpose

Over the past ten years, questions have arisen about the future roles of the judiciary, water commissioners, and the DNRC. As some basins in Montana near completion of the adjudication of pre-1973 'existing water rights,' there will be an increased focus and need for administration of all water rights on a source (i.e., existing rights, permits, certificates, water reservations, and compacted federal reserved water rights.) Montana needs to clearly define the roles for administration and management of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles.

Objectives

This stakeholder working group will determine if the current statutory structure for the post final decree administration and regulation of water rights are adequate to meet future water policy objectives. This SWG will develop consensus-based recommendations to the Executive Branch and DNRC around defining the roles for administration and management of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles. The anticipated timeline is by September 2022.

Overview of Key Challenges for Water Resources Division

The DNRC Water Resources Division (WRD) developed Key Water Challenges and proposed Action Plans based on input received during the Governor's Red Tape Initiative and executive branch feedback, as well as WRD's multiple stakeholder listening sessions, comments, and online public surveys. Many of these challenges were also identified in the 2015 State Water Plan and in discussions with the Water Policy Interim Committee. The proposed Action Plans describe the initial steps we, as a state, will take to address these challenges. These proposed Action Plans are not final solutions in and of themselves but rather a roadmap by which we can craft solutions with stakeholders.

Overview of Key Challenges - <https://comprehensivewaterreview.mtdnrc.gov>

Structure

Stakeholder Working Group Members

- The Stakeholder Working Group is tasked to provide consensus-based recommendations to the Executive Branch and DNRC around defining the roles for administration and management of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles.
- Members were selected based on expressed interest, experience, and expertise and the diverse perspectives they bring to this discussion.
- **Members represent themselves** - while they bring perspectives from various groups and interests, they are not here to speak on behalf of them. We realize that they cannot completely remove those hats nor erase their experiences. We are not asking them to do so.

Rather, we invite them to bring forward their knowledge and experiences and explore collaborative ideas for moving the discussion forward.

Facilitation Team

The Center for Natural Resources and Environmental Policy at the University of Montana provides impartial, nonpartisan assistance to the DNRC WRD and to all participants. It is not an advocate for any particular interest or outcome.

DNRC Technical Advisory Committee (TAC)

The TAC provides relevant information to the SWG to help inform discussions. The TAC also actively collaborates in discussion as appropriate and as invited by the SWG.

The Public

DNRC and the SWG invites the public to attend the SWG sessions. The public will be engaged in discussions and related activities as time and process allows. Information is constantly updated on the [Comprehensive Water Review](#) webpage. The public is encouraged to provide content relevant comments through the public portal page - [Public Comment webpage](#)

DNRC will compile (not summarize) the public comments and share with the SWG one week prior each meeting. It is the SWG members' responsibility to review the public comments and bring forward for discussion relevant comments that need further discussion or have not yet been addressed by the SWG.

Process

The general process for the SWG to accomplish its work is as follows:

- Review and discuss the framework/framing questions for this SWG
- Build shared knowledge and understanding of the framing questions and associated challenges
- Clarify questions as we build understanding
- Explore ideas and supplement with additional information as needed
- Consolidate themes
- Frame recommendations
 - Aim for consensus based
 - No positioning statements – recommendations to have explanation of how they are in the best interest of the greater good for all Montanans
- This SWG will meet in person monthly

Presentation: Final Decree Transition – Framing Questions

https://repos.dnrc.mt.gov/esri/hub/water_processes/PDFS/Transition_framing%20questions_Final.pdf

Discussion Feedback on Framing Questions – Final Decree Transition

General

- Is there consensus if the state of Montana maintains the primacy over water rights, vs federal gov. If so, what institution carries that role? Water court, etc.
- Clarify if funding a consideration

#1 Final Decrees

- How to address WM at different phases of final decrees: now, 10-12 years of transition, all final decrees

- How to include local solutions (e.g. shared agreements, formal and informal) in terms of enforcement and distribution. Local solutions to work.

Information Requests

General

- Rules, policies, statutes
- Define terms
- Flow charts of responsibilities (DNRC, DC < WC < legislature); responsibilities, disputes, enforcements
- Roles and responsibilities
- Hearing from DNRC, Water Court-what the future should look like, WAAC bill. What worked, what didn't and why. Concerns with those proposals.
- WAAC - what is going on, status of that effort
- Water commissioners
- WC, DNRC, Water Commissioners- What is working and what is not working (from presenters)

#1 Final Decrees

- What is the final decree? Give a presentation (Big Sandy) (Judge Brown); what it is, what changed, where are we?
- Water court - status of adjudication, maps, final decree
- Clarification of district court vs water court decrees
- DNRC – all the various statutes and levers with final decrees

#2 Role of the Judiciary

- See notes above in the general section regarding roles and responsibilities

#3 Water Distribution and Disputes

- Water commissioners - 101, examples of red books, enforcement, and distribution. The scope of variation.
- Information: flow chart of water disputes; How do you make a call? How do we improve that process? What are the options to be improved? Tools there? Education needed - responsibilities of having a water right. When can and should the court, DNRC, water commissioner, mediation, local solutions - elevate it for enforcement? Flow chart - enforcement (transitional); flow on illegal and wasting
 1. Abandonment
 2. Waste
 3. Illegal
 4. Modification after PD (e.g., split or sever)
 5. Interstate/intergovernmental
 6. Administration (interpretation of a final decree)
- Water commissioner training, water court presentation

#4 Water Complaints and Enforcement

- Public comment on enforcement, clarifying the process and roles, responsibilities.

Legal

- Water quality, changes, exempt wells- how these recommendations impact these other areas of statutes. Unintended consequences.
- McCarren amendment - legal opinion from the state.
- Sharing agreements - constitute abandonment

Developing the SWG's Work Plan and Approach

Facilitator will work with the SWG to design an initial work plan/timeline for the SWG's work.

Developed ground rules/guiding principles/values – how we want to spend our time together and interact with one another

- Open/Honest/Transparent
- Express valid issues/concerns – stay relevant
- One person talking at a time
- Respectful – respecting diverse perspectives
- Wanting to gain understanding
- Listening to hear (not to plan a response)
- Everyone participates – no one dominates
- Be present during meetings – no cell phone/computer
- Timeliness around homework; participation
- Accountability
- Collaborative
- Innovative for inclusivity
- Inclusive Solution Focused
- Informed
- Result Oriented
- It's not personal/Don't make it personal/It's about the process

Next Steps

- DNRC will draft definition of terms
- Heather and DNRC will draft agenda timelines through August/September 2022
- DNRC will update framing questions document as per feedback from today's meeting
- Ann will send doodle poll for scheduling future meetings